

**Court of Appeals, State of Michigan**

**ORDER**

Dennis R. Ross v Modern Mirror & Glass Company

Docket No. 255863

LC No. 03-000271

Michael J. Talbot  
Presiding Judge

Helene N. White

Kurtis T. Wilder  
Judges

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On the Court's own motion, the October 18, 2005 opinion is hereby VACATED.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 27 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENNIS R. ROSS,

Plaintiff-Appellee,

v

MODERN MIRROR & GLASS CO., and  
TRANSCONTINENTAL INSURANCE CO.,

Defendants-Appellants.

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FOR PUBLICATION

October 18, 2005

9:00 a.m.

No. 255863

WCAC

LC No. 03-000271

Before: Talbot, P.J., and White and Wilder, JJ.

TALBOT, P.J.

Defendants appeal by leave granted from the May 5, 2004 order, of the Worker's Compensation Appellate Commission ("WCAC") that modified a magistrate's decision regarding the application of the "one year back rule" contained in MCL 418.833(2). The WCAC concluded that, under that statute, defendants could only recoup the amount of benefits overpaid to plaintiff in the year prior to filing their recoupment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The basic facts in this case are not in dispute. In 1991, plaintiff suffered a serious work-related injury to his right ankle. He has received worker's compensation benefits from defendants since that time. At some point in the 1990s, plaintiff also began receiving social security disability benefits retroactive to May 1992. In 2002, defendants began reducing plaintiff's weekly worker's compensation benefits in light of the social security disability benefits received by plaintiff.

In April 2002, pursuant to MCL 418.354(9),<sup>1</sup> defendants filed a claim for recoupment of overpayments made to plaintiff since he began receiving social security benefits. In the

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<sup>1</sup> MCL 418.354(9) provides:

Except as otherwise provided in this section, any benefit payments under the social security act, or any fund, policy, or program as specified in subsection (1) which the employee has received or is receiving after March 31, 1982 and during a period in which the employee was receiving unreduced compensation benefits

(continued...)

proceedings below, plaintiff stipulated to the fact that his worker's compensation benefits may be coordinated with the social security benefits. But plaintiff contended that, pursuant to MCL 418.833(2),<sup>2</sup> defendants could only recoup overpayments made in the year prior to filing for claim for recoupment.

The magistrate found MCL 418.833(2) inapplicable, and concluded that defendants could recoup the entire amount of overpayments made from the time plaintiff began receiving social security disability benefits. The magistrate relied upon a prior WCAC decision, *Autry v Hyatt Corp*, 1994 Mich ACO 492, wherein the WCAC noted that MCL 418.354(9) contained no limitation on how far back in time recoupment may occur, and concluded that the specific recoupment provision of that statute superceded the more general one-year back rule of MCL 418.833(2).

Plaintiff appealed the magistrate's decision to the WCAC. The WCAC acknowledged that the *Autry* decision had not been overruled and had been followed by some panels of the WCAC. However, the WCAC also noted that other panels of the WCAC had come to contrary conclusions. Therefore, the WCAC characterized the vitality of *Autry* as "debatable." The WCAC then went on to conclude that the one-year back rule should apply and that the magistrate's decision should be modified in that regard.

This Court granted defendants' application for leave to appeal.

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while this Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). Review by this Court begins with the WCAC's decision, not the magistrate's. *Id.* If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then this Court should treat the WCAC's factual findings as conclusive. *Id.* at 709-710. This Court reviews questions of law in any WCAC order under a de novo standard. *DiBenedetto v West Shore Hosp*, 461 Mich 394,

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(...continued)

under section 351, 361, or 835 shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing date of the notice of request for reimbursement shall allow the employer or carrier with the approval of the bureau to discontinue 50% of future weekly compensation payments under section 351, 361 or 835. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate compensation benefit shall resume when the total amount of the overpayment has been withheld.

<sup>2</sup> MCL 418.833(2) states that "[w]hen an employer or carrier takes action to recover overpayment of benefits, no recoupment of money shall be allowed for a period which is more than 1 year prior to the date of taking such action."

401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id.* at 401-402.

In this case, it is not in dispute that MCL 418.354(9) is applicable. The question is whether defendants' right to recoupment under that statute is limited by MCL 418.833(2).

When faced with questions of statutory interpretation, the courts must discern and give effect to the Legislature's intent as expressed in the words in the statute. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Where the language is unambiguous, it must be presumed that the Legislature intended the meaning clearly expressed, and no further judicial interpretation is permitted; the statute must be enforced as written. *Id.* However, apparently plain statutory language can be rendered ambiguous by its interaction with other statutes. *Stanton v Battle Creek*, 237 Mich App 366, 371; 603 NW2d 285 (1999), affirmed 466 Mich 611; 647 NW2d 508 (2002).

In this case, we find no ambiguity in the statutes, and agree with the conclusion reached by the WCAC. Section 354(9) provides that the social security benefits received by plaintiff created an "overpayment," and that defendants may take action to recoup the overpayment. Section 833(2) provides that when an employer "takes action to recover overpayment," no recoupment of money is allowed for a period more than one year prior to the date the employer took action. As this Court stated in *Ackerman v General Motors Corp*, 201 Mich App 658, 660; 506 NW2d 622 (1993), "[s]ection 833(2) is a statute of limitations." In our opinion, the statutes are clear and unambiguous on their face. Section 354(9) creates a right to recoupment of an overpayment, and § 833(2) limits that right to the recoupment of overpayments made one year prior to taking action.

Defendants argue that the statutes should be interpreted such that the more specific provisions of § 354(9) should supercede the general provisions of § 833(2). However, such a rule of statutory construction is only applicable where there is a conflict or inconsistency between the statutes. See *Szyszkoski v City of Lansing*, 64 Mich App 94, 96-97; 235 NW2d 72 (1975). As discussed, § 354(9) creates a right to recoupment, and § 833(2) is the statute of limitation restricting that right to recoupment to one year back. We see no conflict. Simply because § 354(9) creates a right to recoupment of an overpayment and contains no limitation on the enforcement of that right, it is not in conflict with § 833(2) which, as this Court stated in *Ackerman*, is a statute of limitation pertaining to that right to recoupment.

To the extent a rule of statutory construction should be invoked, the rule of *in pari materia* is more appropriate. Statutes that relate to the same subject must be read together as one, even if they contain no reference to one another. *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 279-280; 597 NW2d 235 (1999). If the Court can construe the two statutes so that they do not conflict, that construction should control. *Id.* In this case, § 354(9) and § 833(2) both relate to "overpayments" by an employer under the worker's disability compensation act, and, as discussed, we see no conflict in the plain language of the statutes. However, defendants' interpretation would create a conflict by allowing an employer to recoup several years of overpayments under § 354(9) despite the limitation on the recoupment of "overpayments" contained in § 833(2). As a result, defendants' interpretation violates the rule of *in pari materia*.

In their brief, defendants cite portions of this Court's opinion in *Ackerman*, *supra* at 660, wherein the Court held that the defendant employer was entitled to recoup the "entire overpayment." However, *Ackerman* is distinguishable and does not stand for the broad proposition that an "entire overpayment" may be recouped.

In *Ackerman*, in October 1985, the defendant paid the plaintiff a lump sum representing benefits that had accrued from 1978 up to that time. Soon thereafter, the defendant realized it had overpaid the plaintiff. In December 1985, the defendant petitioned for recoupment. The WCAC concluded that, by operation of § 833(2), the defendant was not entitled to recoup the entire overpayment, but only the overpayment for benefits due during the one year prior to the defendant taking action for recoupment. This Court reversed, and concluded that the defendant "may recoup the entire overpayment." *Id.* at 662. The Court reasoned that § 833(2) does not limit recoupment to benefits that had become due in the year prior to the defendant taking action, but to benefits that had actually been overpaid in the year prior to the defendant taking action. In *Ackerman*, because the entire overpayment was made to the plaintiff in one lump sum in the year prior to the defendant taking action, the entire overpayment could be recouped.

*Ackerman* is distinguishable from the instant case in two aspects. First of all, the overpayment in *Ackerman* did not arise pursuant to § 354(9). Therefore, *Ackerman* does not support defendant's position that § 354(9) allows for the recoupment of an entire overpayment. More importantly, in *Ackerman*, the entire overpayment made by the defendant occurred within one year prior to the defendant taking action to recoup the overpayment. Therefore, the limitation set forth in § 833(2) was simply not applicable, and the defendant was entitled to recoup the entire overpayment. In the instant case, defendant seeks to recoup overpayments made more than one year prior to the recoupment action; a situation not at issue in *Ackerman*.

The WCAC did not err in limiting defendant's right to recoup overpayments as provided in § 833(2).

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder